

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

**DAVID AUSTIN, Individually and as
Administrator of the Estate of
BONNIE AUSTIN, Deceased**

[REDACTED]

Plaintiff,

vs.

**MOUNT CARMEL HEALTH SYSTEM
dba MOUNT CARMEL WEST**
c/o CT Corporation System, Statutory Agent
4400 Easton Commons Way, Suite 125
Columbus, OH 43219

and

WILLIAM S. HUSEL, D.O.

[REDACTED]

and

TALON SCHROYER, R.PH.

[REDACTED]

and

YUSSUF IBROW, R.N.
c/o Mount Carmel West Hospital
793 West State Street
Columbus, OH 43222

and

JOHN DOE CORPORATIONS 1-5
Names and Addresses
Unknown to Plaintiff,

and

Case No.:

Judge:

COMPLAINT

**JURY DEMAND ENDORSED
HEREON**

**MOTION FOR EXTENSION TO
FILE AFFIDAVIT(S) OF MERIT,
ATTACHED**

JOHN DOE PHYSICIANS 1-5

Names and Addresses
Unknown to Plaintiff,

and

JOHN DOE NURSES 1-5

Names and Addresses
Unknown to Plaintiff,

and

JOHN DOE EMPLOYEES 1-5

Names and Addresses
Unknown to Plaintiff

Defendants.

COMPLAINT

Now comes David Austin, Individually and as Administrator of the Estate of Bonnie Austin, by and through counsel, and for his causes of action states as follows:

PARTIES

1. Until her death on September 30, 2018, Plaintiff's decedent, Bonnie Austin, was a resident of Columbus, Ohio.

2. Plaintiff's decedent, Bonnie Austin, died on September 30, 2018 as a result of lethal dose of Fentanyl and Versed.

3. Plaintiff David Austin was appointed as Administrator of the Estate of Bonnie Austin by the Probate Court of Franklin County Ohio on January 15, 2019 in Case No. 595684.

4. At all times relevant herein, Defendant Mount Carmel Health System dba Mount Carmel West (hereinafter referred to as "Defendant Mount Carmel") was a not-for-profit corporation, incorporated under the laws of the State of Ohio, with its primary place of business in Franklin County, Ohio, which employed physicians, nurses, administrators and other

personnel to help facilitate or otherwise evaluate, care for, and treat patients, including Plaintiff Bonnie Austin, each acting within the course and scope of his or her employment and authority.

5. At all times relevant herein, Defendant William S. Husel, D.O. (hereinafter referred to as “Defendant Dr. Husel”) was a resident of the State of Ohio, duly licensed to practice medicine in the State of Ohio, specifically with a primary place of business located in Franklin County, Ohio, and a primary residence located in Delaware County, Ohio, and held himself out as a medical doctor as he received and treated patients for consideration.

6. At all times relevant herein, Defendant Talon Schroyer, RPh. was a resident of the State of Ohio, duly licensed to practice pharmacy in the State of Ohio, specifically with a primary place of business located in Franklin County, Ohio, and a primary residence located in Union County, Ohio. At all times relevant herein, Defendant Schroyer was providing pharmacy services as an employee and/or agent of Defendant Mount Carmel.

7. At all times relevant herein, Defendant Yussuf Ibrow, R.N. (hereinafter referred to as “Defendant Nurse Ibrow”) was a resident of Franklin County, Ohio, duly licensed to practice nursing in the State of Ohio and was involved in the care of Bonnie Austin on September 30, 2018. At all times relevant herein, Defendant Nurse Ibrow was providing nursing care and services as an employee and/or agent of Defendant Mount Carmel.

8. At all times relevant herein, Defendant Mount Carmel acted through its agents and employees including, but not limited to, Defendant Dr. Husel, Defendant Shroyer, Defendant Nurse Ibrow, John Doe Physicians #1-5, John Doe Nurses #1-5, and John Doe Employees #1-5, who were within the course and scope of their express, implied, or apparent authority as agents of this corporate Defendant.

9. At all times relevant herein, John Doe Physicians #1-5, John Doe Nurses #1-5, and John Doe Employees #1-5 were residents of the State of Ohio and held themselves out to be employees, nurses, agents, or other personnel of Defendant Mount Carmel and/or John Doe Corporations #1-5.

10. The true names and capacities of John Doe Physicians #1-5, John Doe Nurses #1-5, and John Doe Employees #1-5 are unknown to Plaintiff at this time, and Plaintiff has accordingly sued these unknown Defendants under said fictitious names. When the true names of said John Doe Physicians #1-5, John Doe Nurses #1-5, and John Doe Employees #1-5 have been ascertained, Plaintiff will seek leave to amend his Complaint accordingly. Plaintiff is informed and believes that John Doe Defendants are legally responsible for the events and occurrences herein described, and that John Doe Defendants caused injuries and damages to Plaintiff's decedent, Bonnie Austin.

11. At all times relevant herein, John Doe Corporations #1-5 were professional corporations, incorporated or acting under the laws of the State of Ohio, which employed physicians, nurses, and other personnel to evaluate, care for, and treat patients of John Doe Corporations #1-5.

12. The true names and capacities of John Doe Corporations #1-5 are unknown to the Plaintiff at this time and Plaintiff has accordingly sued these unknown Defendants under said fictitious names. When the true names of said John Doe Corporations have been ascertained, Plaintiff will seek leave to amend his Complaint accordingly. Plaintiff is informed and believes that John Doe Corporations are legally responsible for the events and occurrences herein described, and that John Doe Corporations caused injuries and damages to Plaintiff's decedent, Bonnie Austin.

13. At all times relevant herein, Defendants Mount Carmel and John Doe Corporations #1-5 acted through its/their agents, employees and/or independent contractors who were within the course and scope of their employment and authority including, but not limited to, the named Defendants as well as other physicians, nurses, technicians, administrators and other caregivers.

14. At all times relevant herein, the acts and omissions performed by employees, servants or agents of Defendants Mount Carmel and/or John Doe Corporations #1-5 were within the scope of their express, implied or apparent authority as agents of said Defendants.

JURISDICTION AND VENUE

15. Jurisdiction is conferred on this Court by R.C. 2305.01.

16. Pursuant to Rules 3(B)(2) and (6) of the Ohio Rules of Civil Procedure, venue is proper in Franklin County, Ohio, as one or more of the Defendants have their principal place of business in Franklin County and Franklin County is the county in which all or part of the claim for relief arose.

SERVICE OF PROCESS

17. Service of process is permitted on Defendants pursuant to Civ. R. 4.2(A) and (F).

COMMON FACTUAL ALLEGATIONS

18. On or about September 30, 2018, Plaintiff's decedent, Bonnie Austin, was having difficulty breathing and was transported by squad to Defendant Mount Carmel after the medics administered CPR.

19. On or about September 30, 2018, Plaintiff's decedent, Bonnie Austin, presented to Defendant Mount Carmel with complaints of chest pain and difficulty breathing. After she

was stabilized, Bonnie was admitted to ICU where she came under the care of Defendant Dr. Husel.

20. Defendant Husel ordered that 600 micrograms of the drug Fentanyl in addition to a large dose of Versed be given to Bonnie Austin through her IV and told Plaintiff David Austin that his wife was brain dead.

21. This excessive dosage was grossly inappropriate given Bonnie Austin's condition and was either ordered negligently and not properly reviewed or was intentionally prescribed by Dr. Husel for the purpose of ending Bonnie Austin's life.

22. Despite the grossly inappropriate order for an excessive dosage of Fentanyl in combination with the Versed, Mount Carmel's electronic medical records system either failed to alert Bonnie Austin's health care providers that the order appeared to be placed in error or her health care providers ignored the alert because the dosage was intentionally prescribed by Dr. Husel for the purpose of ending Bonnie Austin's life.

23. Defendant Talon Schroyer reviewed and approved Defendant Husel's grossly inappropriate order for an excessive dosage of Fentanyl and Versed and the Fentanyl and Versed was made available to Defendant Nurse Ibrow to be administered to Bonnie Austin.

24. Defendant Talon Schroyer knew that the ordered dosage of Fentanyl and Versed was excessive and grossly inappropriate, served no therapeutic purpose or function, and would only serve to hasten the death of Bonnie Austin.

25. Defendant Nurse Ibrow administered the lethal dose of Fentanyl and Versed to Bonnie Austin on September 30, 2018, knowing that such a grossly inappropriate dose of Fentanyl and Versed would only serve to hasten her death.

26. Bonnie Austin died on September 30, 2018 within minutes of being administered the lethal dose of Fentanyl and Versed.

PLAINTIFF'S FIRST CAUSE OF ACTION
[Medical Negligence]

27. Plaintiff incorporates by reference any and all statements and allegations contained in Paragraphs 1 through 26 as if fully rewritten in this First Cause of Action.

28. Defendants named herein, individually and by and through employees and/or agents, jointly and severally, were negligent, and fell below the accepted standard of care, skill and diligence for health care providers and medical provider employees in Ohio or other similar communities in their care and treatment of Plaintiff's decedent, Bonnie Austin. Specifically, said Defendants, individually and by and through their doctors, nurses, administrators, staff, and employees, failed to meet the accepted standard of care, skill, and diligence in the treatment they provided Bonnie Austin by ordering and administering a lethal dose of Fentanyl and Versed. Defendants were negligent in other respects as well. Furthermore, Mount Carmel was negligent in their supervision of their employees and failed to ensure adequate safeguards with respect to medication dosing and administration.

29. As a direct and proximate result of the aforementioned negligence and failures of the Defendants named herein, individually, and by and through employees and/or agents, Bonnie Austin died.

30. The care and treatment rendered to Bonnie Austin by employees, agents, and servants of said Defendants named herein fell below the accepted standards of care, skill, and diligence for physicians, nurses, administrators, staff, and other health care or other personnel, and breached their duties of reasonable care owed to Bonnie Austin, and that breach proximately resulted in injury, and ultimately, the death of Bonnie Austin.

31. Defendant Mount Carmel, by and through agents, servants and employees, is liable for the negligent acts and omissions of its agents and employees involved in the care and treatment of the decedent.

32. As a direct and proximate result of the failure of the Defendants named herein, individually and by and through agents and/or employees, to discharge their duties of care owed to Bonnie Austin and their failure to meet the accepted standards of care, skill, and diligence, Bonnie Austin suffered physical pain, mental anguish, medical bills, and ultimately, death.

33. Defendants John Doe Physicians #1-5, John Doe Nurses #1-5, and John Doe Employees # 1-5 fell below the accepted standards of care, skill, and diligence for physicians, nurses, aides, technicians, employees, and other medical personnel practicing in Ohio and other similar communities in the care and treatment of Plaintiff's decedent, Bonnie Austin. Specifically, said Defendants, individually and by and through their doctors, nurses, administrators, staff, and employees, failed to meet the accepted standard of care, skill, and diligence in the treatment they provided to Bonnie Austin by ordering and administering a lethal dose of Fentanyl and Versed. Defendants were negligent in other respects as well.

34. As a direct and proximate result of the aforementioned negligence and failures of Defendants John Doe Physicians #1-5, John Doe Nurses #1-5, and John Doe Employees #1-5, Plaintiff's decedent, Bonnie Austin died.

35. The care and treatment rendered to Bonnie Austin by John Doe Physicians #1-5, John Doe Nurses #1-5, and John Doe Employees #1-5 fell below the accepted standards of care, skill, and diligence for physicians, nurses, administrators, staff, and other health care or other personnel, and breached their duties of reasonable care owed to Bonnie Austin, and that breach proximately resulted in injury, and ultimately, the death of Bonnie Austin.

36. As a further direct and proximate result of the failure of Defendants John Doe Physicians #1-5, John Doe Nurses #1-5, and John Doe Employees #1-5 to discharge their duties of care owed to Bonnie Austin and their failure to meet the accepted standards of care, skill, and diligence, Bonnie Austin suffered physical pain, mental anguish, fear of impending death and ultimately, death.

37. Defendants John Doe Corporations #1-5, by and through agents and/or employees breached their duty of reasonable care owed to Plaintiff's decedent. Defendants John Doe Corporations #1-5 are liable for the negligent acts and omissions of its/their employees. The care and treatment rendered to Plaintiff's decedent by employees, agents, and servants of Defendants John Doe Corporations #1-5 fell below the accepted standards of care for physicians, nurses, and other personnel and breached their duties of care owed to Bonnie Austin by ordering and administering a lethal dose of Fentanyl and Versed. Defendants were negligent in other respects as well.

38. As a direct and proximate result of the aforementioned negligence and failures of the Defendant John Doe Corporations #1-5, by and through employees and/or agents, Plaintiff's decedent, Bonnie Austin died.

39. As a further direct and proximate result of the failure of employees and/or agents of Defendants John Doe Corporations #1-5, to discharge their duties of care owed to Bonnie Austin and their failure to meet the accepted standards of care, skill, and diligence, Bonnie Austin suffered physical pain, mental anguish, fear of impending death and ultimately, death.

PLAINTIFF'S SECOND CAUSE OF ACTION
[Wrongful Death]

40. Plaintiff incorporates by reference any and all statements and allegations contained in Paragraphs 1 through 39, as if fully rewritten in Plaintiff's Second Cause of Action.

41. The named Defendants, individually and by and through their agents and employees, were negligent and fell below the accepted standard of care, skill and diligence for health care providers, and medical provider employees in Ohio or other similar communities in their care and treatment of Plaintiff's decedent, Bonnie Austin. Specifically, said Defendants, individually and by and through their doctors, nurses, aides, technicians, administrators, staff and employees failed to meet the accepted standard of care, skill, and diligence owed to Bonnie Austin by ordering and administering a lethal dose of Fentanyl and Versed. Defendants were negligent in other respects as well.

42. Defendants John Doe Physicians #1-5, John Doe Nurses #1-5, and John Doe Employees #1-5 fell below the accepted standards of care, skill, and diligence for physicians, nurses, employees, and other medical personnel practicing in Ohio and other similar communities in the care and treatment of Plaintiff's decedent, Bonnie Austin. Specifically, said Defendants, by and through their doctors, nurses, administrators, staff and employees, failed to meet the accepted standard of care, skill, and diligence owed to Bonnie Austin by ordering and administering a lethal dose of Fentanyl and Versed. Defendants were negligent in other respects as well.

43. Defendants John Doe Corporations #1-5, by and through their agents and/or employees, breached their duty of reasonable care owed to Plaintiff's decedent, Bonnie Austin, and Defendants John Doe Corporations #1-5 are liable for the negligent acts and omissions of their agents, employees and/or servants. The care and treatment rendered to Plaintiff's decedent,

Bonnie Austin, by employees, agents, and/or servants of Defendants John Doe Corporations #1-5 fell below the accepted standards of care for physicians, nurses, and other personnel and breached their duty of care owed to Plaintiff's decedent, Bonnie Austin.

44. As a direct and proximate result of the negligence of all named Defendants, individually and by and through agents and/or employees, and their failure to meet accepted standards of care, skill, and diligence, the decedent, Bonnie Austin, died wrongfully on September 30, 2018.

45. As a direct and proximate result of the aforementioned failures and negligence of the Defendants, individually, as well as by and through their agents and/or employees, and the resulting death of the decedent, Bonnie Austin, her Estate incurred funeral expenses as well as other expenses.

46. As a further direct and proximate result of the aforementioned failures and negligence of the Defendants, individually, as well as by and through their agents and/or employees, and the premature wrongful death of Bonnie Austin, her heirs including, but not limited to, her husband Plaintiff David Austin and daughter Laura Clark, as well as numerous other next of kin, suffered severe mental anguish and emotional distress. In addition, her survivors lost the support, services and prospective inheritance of Bonnie Austin. Her survivors also lost the decedent's society, including loss of companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education. Bonnie Austin's survivors expect to suffer continued mental anguish, emotional distress, and loss of support, services, and society indefinitely into the future.

47. By virtue of the doctrine of *respondeat superior*, Defendants Mount Carmel and John Doe Corporations #1-5 are and remain liable for the decedent's death.

48. By virtue of the doctrine of *agency by estoppel*, Defendants Mount Carmel and John Doe Corporations #1-5 are and remain liable for the decedent's death.

PLAINTIFF'S THIRD CAUSE OF ACTION
[Negligent Infliction of Severe Emotional Distress]

49. Plaintiff incorporates by reference any and all statements and allegations contained in Paragraphs 1 through 48, as if fully rewritten in Plaintiff's Third Cause of Action.

50. As a direct and proximate result of the aforementioned negligence and failures of the named Defendants, individually, and by and through employees and/or agents, Defendants prematurely concluded Bonnie Austin was brain dead and so advised her husband, Plaintiff David Austin, and administered an excessive dose of Fentanyl and Versed which hastened Bonnie Austin's death.

51. As a direct and proximate result of Defendants' negligence, Plaintiff David Austin, who was physically present during the aforementioned negligence, suffers from and will continue to suffer from severe and debilitating emotional distress and anguish. Furthermore, he suffers from and will continue to suffer from severe emotional distress and anguish from the after-acquired knowledge that his wife was negligently or intentionally killed.

52. Plaintiff David Austin's severe and debilitating emotional distress is a direct and proximate result of the negligent conduct of the Defendants named herein and was reasonably foreseeable by said Defendants at the time that their negligent conduct occurred.

PLAINTIFF'S FOURTH CAUSE OF ACTION
[Punitive Damages]

53. Plaintiff incorporates by reference any and all statements and allegations contained in Paragraphs 1 through 52, as if fully rewritten in Plaintiff's Fourth Cause of Action.

54. By virtue of the aforementioned failures and negligence of the defendants, individually, as well as by and through their agents and/or employees, defendants acted willfully, wantonly, and with reckless misconduct and malice toward decedent Bonnie Austin.

55. As a direct and proximate result of defendants' conduct, the defendants are liable for punitive damages.

DEMAND

WHEREFORE, Plaintiff David Austin, Individually and as Administrator of the Estate of Bonnie Austin, deceased, demands judgment against each and every Defendant named herein, jointly and severally, on all claims presented herein as to medical negligence and wrongful death or otherwise and an award of compensatory, punitive, consequential, incidental, special, and medical damages in an amount greater than Twenty-Five Thousand Dollars (\$25,000.00) together with costs herein expended and such other relief as may be just and appropriate in this case.

Respectfully submitted,

/s/ David Shroyer

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JURY DEMAND

Now comes the Plaintiff and demands that the within matter be tried by a jury of eight (8).

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